



Decision

Matter of: A & W Maintenance Services, Inc.--
Reconsideration

File: B-255711.2

Date: January 17, 1995

Michael A. Worku for the protester.
Milton D. Watkins, Esq., Department of the Air Force, for
the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency's determination that proposal risk rating should be
"low" notwithstanding prior instance of defective pricing by
offeror is reasonable given the circumstances of the
defective pricing and the numerous strengths identified in
the offeror's proposal.

DECISION

A & W Maintenance Services, Inc. requests reconsideration
of our decision, A & W Maintenance Servs., Inc., B-255711,
Mar. 25, 1994, 94-1 CPD ¶ 214, denying its protest of an
award to A-Bear's Janitorial Service, Inc., under request
for proposals (RFP) No. F34650-93-R-0111, issued by the
Department of the Air Force for administrative custodial
services at Tinker Air Force Base, Oklahoma.

We deny the request for reconsideration.

A & W essentially protested that it should have received
award under the RFP instead of A-Bear because it submitted
the low-priced proposal that was technically equal to
A-Bear's proposal. Our decision found reasonable the
agency's award to A-Bear's where the RFP evaluation criteria
gave greater importance to technical factors than to price
and A-Bear's marginally higher-priced proposal was
technically superior to A & W's proposal. As indicated in
our prior decision, both A-Bear's and A & W's proposals
received "low" performance risk ratings.

On reconsideration, A & W first alleges that our prior decision was in error because it did not consider the impact of A-Bear's defective pricing under its incumbent contract for these services. This argument was based on information made available to A & W shortly after the issuance of our prior decision, concerning a modification to A-Bear's prior contract, which adjusted that contract price to account for A-Bear's defective pricing. A & W alleges that either the agency failed to consider this instance of defective pricing in the assessment of performance risk or the agency's assessment was unreasonable, such that the award selection was not reasonably based.

The record shows that in 1990, the Defense Contract Audit Agency (DCAA) determined that, during negotiations on the prior contract, A-Bear's had submitted defective cost or pricing data, which resulted in A-Bear's overcharging the Air Force during the course of that contract. A-Bear denied that the overcharge was caused by defective pricing or was intentional. After further review, DCAA revised its audit findings, concluding that some of the cost or pricing data previously considered to be defective were not in fact defective and did not result in overcharges to the government. DCAA also concluded that some of the defective cost or pricing data resulted in A-Bear's undercharging the government for some costs. DCAA's revised audit finding¹, although still finding defective pricing to some extent, reflected a significantly reduced amount by which A-Bear's had been first thought to have overcharged the Air Force. The Air Force and A-Bear's subsequently agreed on a settlement, whereby A-Bear's was credited for the undercharges and agreed to repay the Air Force for the balance of overcharges.

The record shows that, during the evaluation of proposals, which resulted in this protested award, the Air Force's Performance Risk Analysis Group (PRAG) was aware of the settlement and requested A-Bear's to explain the issues surrounding it. A-Bear's did so, stating that it did not consider its prior cost or pricing data to be defective but had settled with the Air Force to avoid unattractive litigation. The PRAG cited the instance of prior defective pricing as a weakness. This was the only weakness cited by the PRAG with regard to A-Bear's proposal under the cost evaluation factor; on the other hand, numerous strengths, including a finding that A-Bear's "provides accurate and timely cost data when requested," were also noted. The PRAG

¹A & W was not aware, nor is there any reason that it should have been aware, of this matter during the course of the consideration of its prior protest.

assigned A-Bear's proposal a "low" performance risk rating on every evaluation factor.

Thus, contrary to A & W's assertions, the Air Force did consider A-Bear's defective pricing settlement, but found that A-Bear's proposal still represented only a "low" performance risk. As indicated by the Air Force, the errors which led to the problem here were caused by accounting weaknesses that were related to the company's learning to administer a large government contract as a section 8(a) small disadvantaged business. There was no suggestion of fraud by A-Bear's. Given what the evaluators considered to be A-Bear's numerical strengths, we cannot find unreasonable the agency's assignment of a low performance risk to A-Bear's proposal under these circumstances.

The remaining portion of A & W's request for reconsideration contains numerous allegations that our decision failed to adequately address all of the protest issues and incorrectly applied prior case law. A & W does not show error in either fact or law upon which our decision rests, but rather disagrees with our analyses and conclusions. Mere disagreement with our decision does not warrant reversal or modification of the decision. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

For example, A & W asserts that the RFP, which listed the evaluation factors in "descending order of importance," did not adequately state the relative importance of the evaluation factors and thus the factors should be considered substantially equal to each other. "Descending order of importance" is not an ambiguous phrase: it means that factor 1 is more important than factor 2, which is more important than factor 3, etc. This hierarchy reflects a reasonable downward progression of relative weights; a more specific statement of relative weights is not required. North-East Imaging, Inc., B-2567281, June 1, 1994, 94-1 CPD ¶ 332.

A second example concerns A & W's allegation that, since both offerors received the same adjectival rating on manloading, an evaluation subfactor, the offerors were technically equal on this subfactor such that the source selection official improperly considered additional man

²The agency provided our Office with the entire file on the DCAA audit and the settlement with A-Bear's. There is no evidence of fraud on the part of A-Bear's. Rather, the prior instance of defective pricing appears to be caused by accounting weaknesses and a non-reporting of changes in projected cost or pricing data as contingencies changed during the course of the contract.

power equivalents offered by A-Bear's as an advantage under this subfactor. We cited Hattal & Assoc., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90 (two proposals rated technically acceptable does not mean both proposals are technically equal), to support the proposition that proposals receiving the same adjectival rating are not necessarily of equal quality and the agency may properly consider in its source selection the specific advantages of one proposal in a given area, even though that proposal received the same adjectival rating as other proposals. Although, as A & W correctly notes, the decision cited had only one adjectival rating for acceptable proposals, whereas the protested procurement had two adjectival ratings for acceptable proposals, i.e., acceptable and exceptional, this factual difference is not significant because both cases are consistent with the well established principle that adjectival ratings and point scores are only a guide to assist contracting agencies in evaluating proposals. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Harris Corp.; PRC Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results subject only to the tests of rationality and consistency with the RFP evaluation criteria. Grey Advertising, Inc., *supra*. The source selection officer here reasonably found A-Bear's proposal more advantageous than A & W's proposal under the manloading subfactor, even though both proposals received the same adjectival rating for this subfactor, because A-Bear's offered to provide more man power than A & W at a negligible price difference. See TRI-COR Indus. Inc., B-252366.3, Aug. 25, 1993, 93-2 CPD ¶ 137.

These two examples are illustrative of A & W's failure to present more than mere disagreement with our decision in requesting reconsideration. As nothing in A & W's request shows any errors of law or fact, it does not warrant reversal or modification of our decision.

The request for reconsideration is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel